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No. 00-0391

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

Petitioner,

— v.—

ROBERT A. THOMAS,

Respondent.

ON WRIT OF *CERTIORARI*
TO THE FLORIDA SUPREME COURT

BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit corporation founded in 1958 to ensure justice and due process for persons accused of crime; to foster integrity, independence, and expertise of the criminal defense bar; and to promote the proper and fair administration of criminal justice. Composed of more than 10,000 attorneys and 28,000 affiliate members in 50 states, NACDL is recognized by the American Bar Association as an affiliate organization. It also has full representation in the ABA's House of Delegates. NACDL strives to defend the liberties guaranteed by the Bill of Rights. NACDL seeks to defend individual liberties guaranteed by the Bill of Rights and has a keen interest in ensuring that legal proceedings are handled in a proper and fair manner.

STATEMENT OF THE CASE

The facts are not disputed. On the evening of February 28, 1997, respondent Robert Thomas drove a car into the driveway of a home in Lakeland, Florida. Inside the home, police were making arrests for narcotics offenses. Detective J.D. Maney of the Polk County Sheriff's Office was stationed outside the home in a patrol car. Detective Maney observed respondent's car enter the driveway and saw respondent exit his car and walk to the rear of the car. Detective Maney approached respondent and asked to see his driver's license. Maney had no reason to believe that there

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amicus* states that no counsel for a party authored this brief in whole or in part and no person, other than *amicus*, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

was any criminal evidence in respondent's vehicle. A check of respondent's license revealed an outstanding warrant for a probation violation. Maney arrested respondent and escorted him inside the residence. Maney then returned to respondent's car and searched it, discovering substances inside the driver's side door and in the glove box that were later identified as illegal narcotics. Five minutes elapsed between the time that respondent had exited his car and Maney's search of the vehicle. JA 20-21,135-36.

The trial court granted respondent's motion to suppress the narcotics found in his car, but the District Court of Appeal, Second District, reversed. JA 130-34. Interpreting *New York v. Belton*, 453 U.S. 454 (1981), the appellate court explained that "a court may not determine on a case-by-case basis whether the interior of an automobile is within the scope of a search incident to arrest." JA at 132. Because there was no evidence that respondent's arrest was a preplanned pretext to conduct a warrantless search of his car, the court ruled that "the bright line test in *Belton* applies" even though respondent was outside his vehicle when arrested. *Id.* at 133. Consequently, the appellate court held that the search of respondent's car was a valid search incident to arrest.

The Florida Supreme Court reversed the District Court of Appeal's ruling. JA 135-45. The court recognized that *Belton* established "a bright-line rule to be applied in all cases" where the occupant of an automobile is arrested. *Id.* at 138. The court concluded, however, that *Belton*'s *per se* rule was inapplicable "when an individual voluntarily exits his car without provocation from [police] and without knowledge of their presence." *Id.* at 137. The court adopted the reasoning of *United States v. Hudgins*, 52 F.3d 115 (6th Cir. 1995), which explained that a search incident to arrest was valid under *Belton* only "'[w]here the officer initiates contact with the defendant, either by actually confronting the defendant or

by signaling confrontation with the defendant, while the defendant is still in the automobile, and the officer subsequently arrests the defendant regardless of whether the defendant has been removed from or has exited the automobile.'" JA 141-42, quoting *Hudgins*, 52 F.3d at 119. Thus, the court held that *Belton*'s *per se* rule was confined to "situations where [an] officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant." JA 142-43.

Applying this standard to the facts, the court below ruled that "the record is clear that [respondent] did not exit the vehicle upon the direction" of Detective Maney. JA 143. Hence, *Belton* was inapplicable. The court ordered the trial court to decide whether the search of respondent's car could be upheld as a valid search incident to arrest under *Chimel v. California*, 395 U.S. 752 (1969).

SUMMARY OF ARGUMENT

In *Chimel v. California*, *supra*, and *New York v. Belton*, *supra*, this Court explained that although searches incident to arrest were not subject to the warrant requirement, an officer's authority to conduct a search incident to arrest "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'" *Chimel*, 395 U.S. at 762, quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968); *Belton*, 453 U.S. at 457, quoting *Terry*. *Chimel* ruled that search incident to arrest permits a search of the arrestee's person for weapons or evidence, as well as "the area 'within his immediate control.'" *Chimel*, 395 U.S. at 763. In *Belton*, noting that it was simply applying *Chimel*'s principles in the "particular and problematic" context of arresting a car occupant, this Court held that a valid arrest of an automobile occupant permits a contemporaneous search of the passenger compartment incident to the arrest. *Belton*, 453 U.S. at 460,

n.3 and accompany text.

Interpreting *Belton*, the Florida Supreme Court ruled that *Belton*'s bright-line rule is limited to cases where an officer "initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant" while the defendant is seated inside a ca circumstances not present in this case. JA 143. This brief supports the judgment below, but offers a more straightforward and easily applied standard: *Belton*'s bright-line rule should be confined to cases where a person is seized[2] or subject to seizure[3] while an occupant of a car. If police arrest a person who was not seized or subject to seizure while inside a vehicle, the scope of an officer's authority to search the "area" within the arrestee's immediate control is governed by *Chimel*, not by *Belton*'s *per se* search rule.

If *Belton* covers every "recent occupant" of a vehicle, as petitioner argues, police and judges must make

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[2] An individual is "seized" under the Fourth Amendment only if a reasonable person would have believed that he was not free to leave the scene, or would not have felt "free to decline [an officer's] requests or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 434, 436-37 (1991).

[3] A person is "subject to seizure" when the police have reasonable suspicion or probable cause that the person has committed a criminal offense. See *United States v. Sokolow*, 490 U.S. 1 (1989); *Illinois v. Gates*, 462 U.S. 213 (1983). Police have the authority to seize a motorist when they have reasonable suspicion or probable cause that the motorist has committed a crime or traffic offense. See *Delaware v. Prouse*, 440 U.S. 646, 653 (1979) ("stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of the Fourth Amendment").

individualized assessments regarding an arrestee's temporal and spatial proximity to a vehicle. Indeed, petitioner concedes the point. Restricting *Belton* to cases where an occupant of a vehicle was subject to seizure avoids case-by-case judgments regarding an arrestee's "association" with a vehicle. Police officers and judges need only decide whether a person was seized or subject to seizure while an occupant of a car. When police seize a person inside a car and the person is subsequently arrested, *Belton*'s *per se* rule applies.

Before explaining why this *per se* rule advances Fourth Amendment principles generally and the goals of *Belton* specifically, this brief explains why the Florida Supreme Court correctly interpreted this Court's precedents. *Belton* defined what constitutes "immediate control" under *Chimel* for the frequently occurring situation where police seize and arrest automobile occupants. Rather than forcing officers to make individualized assessments of a car occupant's "grabbing distance," *Belton* established a bright-line rule to resolve the ambiguities that arose when *Chimel*'s "immediate control" test was applied to an arrestee who was seized inside a car. When police seize a person outside a car before executing an arrest, there is no ambiguity regarding the arrestee's "grabbing distance" inside the car. Thus, the need for *Belton*'s "bright-line" rule is absent.

The ruling below properly refused to extend *Belton* to all cases involving a "recent occupant" of an automobile. Justice Stewart's opinion in *Belton* confirms that the Court's ruling only applies to arrestees who were "occupants" of an automobile when seized by the police. Extending *Belton* to cover all "recent occupants" who have exited their vehicles prior to being seized by the police generates greater uncertainty and necessitates case-by-case decisions regarding an arrestee's temporal and spatial proximity to a vehicle for search incident to arrest purposes. Petitioner also asserts that

"close association" or recent occupancy is the "only condition required" to searching an arrestee's vehicle. Pet Br. 11 & 13. Petitioner's argument is a radical departure from the search incident to arrest rules announced in *Chimel* and *Belton*, and has never been approved by this Court.

ARGUMENT

I. *BELTON*'S BRIGHT-LINE RULE WAS NOT A SHIFT OR EXPANSION OF *CHIMEL*'S SEARCH INCIDENT TO ARREST TEST; RATHER, *BELTON*'S HOLDING WAS COMPELLED BY THE NEED FOR A *PER SE* RULE FOR THE FREQUENTLY OCCURRING SITUATION WHERE POLICE SEIZE AND ARREST CAR OCCUPANTS

In *Chimel v. California*, *supra*, this Court sought to clarify the authority of the police to search incident to arrest.[4]

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[4] In resolving Fourth Amendment questions, this Court often considers common law rules to evaluate the reasonableness of a challenged police intrusion. See, e.g., *Wyoming v. Houghton*, 526 U.S. 295, 299-300 (1999). Generally speaking, the common law permitted searches incident to arrest. However, the legality of a search incident to arrest "has historically been formulated into two distinct propositions." *United States v. Robinson*, 414 U.S. 218, 224 (1973). The common law recognized an officer's power to seize weapons or stolen property from an arrestee's *person*. See Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich.L.Rev. 547, 627 (1999). Searching the *area* within the control of the arrestee, "while likewise conceded in principle, has been subject to differing interpretations as to the extent of the area which may be searched." *Robinson*, 414 U.S. at 224. To the extent that the common law "yields [an] answer," *Houghton*, 526 U.S. at 299, on the scope of an officer's authority to search the "area"

For half a century prior to *Chimel*, the scope of an officer's authority to search incident to arrest was "subject to shifting constitutional standards" and inconsistent statements from the Court. *Id.* at 770 (White, J., dissenting). In fashioning a rule for this area of the law, *Chimel* explained that although search incident to arrest power was not controlled by the requirements of the Fourth Amendment's Warrant Clause, an officer's authority in this context would be judged by the same constitutional norms that governed other warrantless intrusions. Thus, the scope of an officer's authority to search incident to arrest "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'"

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within an arrestee's control, those sources do not support a broad interpretation of an officer's authority to search incident to arrest.

At the time of the framing, legal authorities did not recognize an officer's power to search an arrestee's home incident to arrest. See William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning*, 602-1791, at 1183-84 (1990) (unpublished Ph.D. dissertation, Claremont Graduate School) (footnote omitted) ("The legal authors of 1761-1776 agreed that houses could be broken into to consummate the arrest process, but they did not also say that houses could be searched during that process. The assumption of most legal authorities, in other words, was that arrests and arrest warrants were not excuses to conduct general searches."). Professor Telford Taylor has asserted that "[t]here is little reason to doubt that search of an arrestee's person and *premises* is as old as the institution of arrest itself," Telford Taylor, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 28 (1969) (emphasis added), but the historical support for Taylor's conclusion on the scope of an officer's power to search an arrestee's home incident to arrest is extremely weak. See Davies, *supra*, at 646, n.276. Professor Thomas Davies has noted that "[t]he reported decisions regarding the allowable scope of searches incident to arrest first became evident in court records during the late nineteenth century. *Id.* at 638, n.250. Thus, the common law, at the time of the framing, did not recognize broad powers of search incident to arrest.

Chimel, 395 U.S. at 762, quoting *Terry v. Ohio*, 392 U.S. at 19. Consistent with this fundamental norm of search and seizure doctrine,[5] *Chimel* held that search incident to arrest authority permits the police to search the arrestee's person, as well as "the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.* at 763.

New York v. Belton, *supra*, built directly on *Chimel*'s holding. In *Belton*, the Court addressed the following narrow issue: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile *in which he was riding*?" *Id.* at 455 (emphasis added). In answering this question, the Court reaffirmed what *Chimel* had emphasized: search incident to arrest power "'must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" *Belton*, 453 U.S. at 457, quoting *Terry v. Ohio*, 392 U.S. at 19 (internal quotation marks omitted). Indeed, *Belton* explained that its ruling "does no more than determine the meaning of *Chimel*'s principles in this particular and problematic content [sic]. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." *Belton*, 453 U.S. at 460, n.3. *Belton* held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460 (footnotes omitted).

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[5] See e.g., *Wilson v. Layne*, 526 U.S. 603, 611 (1999) ("the Fourth Amendment does require that police actions in execution of a warrant be related to the objectives of the authorized intrusion").

Belton did not represent a shift or expansion of the fundamental norm announced in *Chimel*. On the contrary, the bright line created in *Belton* defined what constitutes "immediate control" under *Chimel* for the frequently occurring situation where police seize and arrest automobile occupants. In other words, *Belton* established a straightforward and easily applied definition of *Chimel*'s "grabbing distance" principle for a person seized while an occupant of a car.

A. The Factors Compelling *Belton*'s Bright-Line Rule

When police arrest a person inside a home, *Chimel* permits a search of the arrestee's person, as well as a search of the area within the arrestee's "immediate control." *Chimel*, 395 U.S. at 763. When an arrest occurs indoors, deciding what constitutes an arrestee's "immediate control" depends on the particular facts of each case. See 3 Wayne R. LaFave, SEARCH AND SEIZURE, § 6.3 (c) at 305-12 (3d ed. 1996). In *Belton*, this Court recognized that determining the "proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupant," 453 U.S. at 459, involves a "problematic" application of *Chimel*'s "immediate control" rule. *Id.* at 460, n. 3; see also *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring in judgment) (describing the issue in *Belton* as presenting a "volatile and fluid situation of an encounter between an arresting officer and a suspect apprehended on the public highway"). Applying *Chimel*'s "immediate control" test in this context is problematic for both practical and doctrinal reasons.

As a practical matter, an officer cannot remove a motorist from a car, effectuate an arrest, secure the arrestee, and search his "grabbing distance" in a single stroke. This dilemma is particularly vexing when a single officer encounters

a multi-occupant vehicle, as was the case in *Belton*.[6] When conducting the arrest of a motorist or passenger inside a car, an officer first secures an arrestee to protect his or her own safety. Then an officer exercises his authority to search the area within the immediate control of the arrestee. In all but the most extraordinary case, when the officer begins a search incident to arrest, the arrestee is no longer inside the vehicle, see *United States v. Karlin*, 852 F.2d 968,970-71 (7th Cir. 1988), *cert. denied*, 489 U.S. 1021 (1989), just as a pedestrian will be secured before an officer searches a container or object within the grabbing distance of the pedestrian. See e.g., *Draper v. United States*, 358 U.S. 307, 314 (1959) (search of a "zipper bag" that arrestee was carrying was valid search incident to arrest).

As a doctrinal matter, *Chimel*'s "immediate control" test produced inconsistent results when applied on a case-by-case basis to the arrest of a car occupant. See *Belton*, 453 U.S. at 460-61. Although easily stated, the "immediate control" rule offered hazy answers for police and the judiciary when applied to a person seized inside a car. For the officer in the field, the "immediate control" test failed to provide clear answers to basic questions regarding their authority to search incident to arrest. For example, does "the area within the immediate control of the arrestee" include a container found on the backseat of a car when an officer arrests a motorist for drunk driving? Is the glove compartment part of "the area

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[6] In *Belton*, an officer stopped a vehicle that contained four occupants. After developing probable cause that contraband was in the car, the officer ordered the men out of the car and placed them under arrest. At the time, the officer had only one set of handcuffs. See Brief for Petitioner at 3 *New York v. Belton*, 453 U.S. 454 (1981) (No. 80-328)(citing Joint Appendix 55, 56). As the State later stressed in its brief, when the officer began his search, the situation was "still fluid." *Id.* at 8.

within the immediate control of the arrestee" when the arrestee is a passenger seated in the backseat of a car? The "immediate control" rule of *Chimel* did not provide police any "bright-line" answers to these basic questions.

Nor did *Chimel* provide clear solutions to judges in cases where an arrestee was seized while inside a car. Prior to *Belton*, the scope of an officer's authority to search a car incident to the arrest of a motorist remained uncertain. Lower court rulings were often inconsistent. Indeed, *Belton* acknowledged that "no straightforward rule ha[d] emerged from the litigated cases" regarding the extent of police authority to search a car incident to the arrest of an occupant. 453 U.S. at 459.

Accordingly, *Belton*'s bright-line rule was designed to make it easier for police and judges to apply *Chimel*'s "immediate control" test to a person seized while occupying a car.

> [*Belton*] adopted a factual presumption that, if the arrestee is an occupant of the vehicle, the arrestee can reach in the vehicle and get a weapon or destroy evidence. Following *Belton*, a showing of the actual fact of occupancy would automatically provide the presumed fact of access to the passenger compartment which is required by *Chimel* as a prerequisite for a warrantless search of a vehicle incident to arrest.

Glasco v. Virginia, 513 S.E.2d 137, 144 (Va. 1999)(Lacy, J., concurring).

Instead of police officers conducting individualized, on the spot assessments of an automobile occupant's "grabbing

distance," *Belton* established a bright line to resolve the ambiguities that arose when *Chimel*'s "immediate control" test was applied to an arrestee who was seized inside a vehicle: For someone seized while an occupant of a car, *Chimel*'s "immediate control" test would be triggered at the moment the police seizure occurred, and would extend to the entire passenger compartment of the vehicle.

B. The Factors That Compelled *Belton*'s Holding Are Absent When An Officer Seizes A Person Outside A Vehicle

The practical and doctrinal concerns that compelled *Belton*'s holding are absent when a suspect is seized outside a vehicle. Therefore, *Belton*'s *per se* rule is no longer necessary; instead, the scope of an officer's authority to search incident to arrest is controlled by *Chimel*.

When police arrest a pedestrian, they are not confronted with the practical quandary an officer confronts when attempting to arrest a person seated inside a car: simultaneously removing a suspect from a vehicle, executing an arrest, and searching the "grabbing distance" of the suspect in a single stroke. Therefore, the Florida Supreme Court correctly held that *Belton*'s bright-line rule should not extend to arrests and searches that go beyond the concerns that compelled *Belton*'s specific holding.

Similarly, when police seize a person outside a vehicle before executing an arrest, the need for a bright-line rule that defines the arrestee's "immediate control" inside the vehicle is absent. "The objective and the virtue of the *Belton* decision was to obviate uncertainty in applying the *Chimel* 'lunge area' rule to automobile searches. *Belton* simplified the task of [police] and the courts by declaring that the entire passenger compartment would be deemed within the arrestee's reach,

and thus subject to search, when a vehicle occupant is arrested." *Idaho v. Foster*, 905 P.2d 1032, 1038 (Idaho Ct. App.1995). When the seizure occurs outside a car, however, the ambiguity regarding an arrestee's "grabbing distance" inside the car is missing. As the District of Columbia Circuit has recognized, "[n]o such ambiguity exists...where the police come upon the arrestees outside of an automobile. Under such circumstances, the rationale for *Belton*'s bright-line rule is absent; instead, the normal framework of *Chimel* applies." *United States v. Fafowora*, 865 F.2d 360, 362 (D.C. Cir.), *cert. denied*, 493 U.S. 829 (1989).[7]

Petitioner contends that a "valid custodial arrest of a recent occupant of a motor vehicle is the only condition required to be met in order to conduct a contemporaneous search of the vehicle incident to that arrest." Pet. Br. 11. Petitioner's argument permits an automatic and suspicionless search of an arrestee's car and the private possessions therein, without the concerns that compelled *Belton*'s holding. More importantly, *Belton* is severed from its foundation in *Chimel* if it is extended to a case where police seize an individual outside of a car. As noted, both *Chimel* and *Belton* recognized that the scope of a search incident to arrest "'must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" *Chimel*, 395 U.S. at 762, quoting *Terry v. Ohio*, 392 U.S. at 19 (internal quotation marks omitted); *Belton*, 453 U.S. at 457. In practice, this

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[7] Accord, *United States v. Christian*, 187 F.3d 663, 671, n.6 (D.C. 1999) (citing *Fafowora* and explaining that *Belton* does not apply where police observed suspect standing beside an empty vehicle). Interestingly, in *Christian*, the United States, in contrast to the position of the Solicitor General here, urged a position similar to that adopted by the Florida Supreme Court *sub judice*. See *id.* ("In the instant case, the government does not urge the application of *Belton*, but rests instead on the normal framework of *Chimel*.").

means that searches incident to arrest must be confined to "the arrestee's person and the area 'within his immediate control.'" *Chimel*, 395 U.S. at 763. If police are automatically permitted to search an arrestee's car even though the vehicle is not "'within his immediate control,'" they are not obeying the rule announced in *Chimel*. *Id.* Put simply, "[i]f there is no connection shown between a person's occupancy of a vehicle and his arrest, then extending the scope of the search incident to arrest to the vehicle is neither 'tied to' nor 'justified by' circumstances of the arrest." *Glasco v. Virginia*, 513 S.E.2d at 144 (Lacy, J., concurring), quoting *Belton*, 453 U.S. at 457.

The analysis of the Florida Supreme Court is compelled by *Chimel*'s holding. Indeed, *Chimel* warned that a search incident to arrest provides no justification "for routinely searching any room other than that in which an arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." 395 U.S. at 763. Similarly, there is no comparable justification for searching an arrestee's vehicle unless it is "'within his immediate control." *Chimel*, 395 U.S. at 763. As the Minnesota Supreme Court aptly put it, "*Belton* does not permit searches of arrestees' vehicles; it permits searches of occupants' vehicles incident to lawful arrest." *Minnesota v. Robb*, 605 N.W. 2d 96, 101 (Minn. 2000).

II. THE RULING BELOW CORRECTLY REFUSED TO EXTEND *BELTON* TO ALL CASES INVOLVING A "RECENT OCCUPANT" OF AN AUTOMOBILE

According to petitioner, *Belton* makes no distinction between the arrest of an occupant and a recent occupant of an automobile. Petitioner also contends that the ruling below – which distinguished between a person who is ordered out of his vehicle and someone who exits his vehicle without police

contact – "serves only to blur, if not totally erode, the *Belton* principle." Pet. Br. 5. Petitioner's analysis, however, is inherently confusing. At times, petitioner suggests that *Belton* applies any time someone associated with an automobile is arrested. *Id.* at 13-14 ("If close association with the car is demonstrated at the moment of arrest, the arrestee is considered a 'recent occupant.'") Thus, petitioner asserts a search of an arrestee's vehicle is always permissible because "the arrest itself provides the justification for a search." *Id.* at 4. Cf. U.S. Br. 17 ("[R]egardless of why an individual gets out of his car, 'the bright-line that [this Court] drew in *Belton* clearly authorizes [a search of the car] whenever officers effect a custodial arrest.'") (internal quotations marks omitted).

In other places, petitioner suggests that *Belton*'s *per se* rule is limited to "recent occupants" of automobiles. Pet. Br. 7 ("If a valid custodial arrest of a recent occupant of a motor vehicle has been effected, a search of that vehicle incident to that arrest may be undertaken."). On the next page, however, petitioner concedes that restricting *Belton* to "recent occupants" does not create a bright-line rule for police or judges. See Pet. Br. 8 ("*Belton*'s bright-line rule is not without limits. Indeed, certain factual situations will present temporal and spatial expansion that will render a search unreasonable."). Petitioner's analysis is contradictory, and petitioner's proposal to extend *Belton* to "recent occupants" will create greater uncertainty regarding an officer's authority to search incident to arrest.

A. *Belton*'s *Per Se* Rule Applies Only When Police Seize A Person In A Car And The Person Is Subsequently Arrested

Petitioner's argument that *Belton*'s holding controls both "occupants" and "recent occupants" of a car misreads *Belton*. As the nation's most prominent Fourth Amendment

scholar has explained, "*Belton* applies only in the case of 'a lawful custodial arrest of the occupant' of the vehicle." LaFave, supra § 7.1(a) at 436 (footnotes omitted).

Justice Stewart's opinion in *Belton* confirms that the Court's ruling only applies to an arrestee who was seized while an occupant of a car. First, the facts show that Roger Belton and three others were occupants of a car when their vehicle was seized for speeding. Although Belton had exited the vehicle before being placed under arrest, thus making him a "recent occupant," his status as a "recent occupant" was the direct result of the officer's authority to seize Belton while he was inside the car and to arrest him after detecting evidence of contraband within the car.

Next, when describing the precise issue before it, *Belton* indicates that the Court was focusing on arrestees who were occupants of automobiles. In the opening sentences of his opinion, Justice Stewart wrote: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile *in which he was riding*? That is the question at issue in the present case." 453 U.S. at 455 (emphasis added).

Significantly, *Belton*'s holding is limited to situations where an arrestee was an "occupant" of a vehicle. Thus, the Court stated: "[W]e hold that when a policeman has made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460 (footnotes omitted) (emphasis added). Finally, when applying this holding to the facts, Justice Stewart explained that the defendant's "jacket was located inside the passenger compartment of the car in which [Belton] had been a passenger just before he was arrested," thus making the jacket

"'within the arrestee's immediate control'" for purposes of *Chimel*. *Id.* at 462 (footnote omitted).

In sum, although it is true that "an individual need not be inside the vehicle at the time of the arrest for *Belton* to authorize a search of the car incident to the arrest," U.S. Br. 12, and that *Belton* itself used both the terms "occupant" and "recent occupant," see 453 U.S. at 460, *Belton*'s analytical focus was directed toward an arrestee who was an occupant of a car when seized by the police. The lone use of the term "recent occupant" in *Belton* was an obvious reference to an arrestee who had been seized by the police while he or she was an occupant of an automobile. See also, *Glasco v. Virginia*, 513 S.E.2d at 144 (Lacy, J., concurring).

B. The Term "Recent Occupant" Is Inherently Ambiguous

Petitioner and the United States argue that the ruling below blurs the bright-line rule established in *Belton*. Extending *Belton*, however, to cover motorists who have exited their vehicles prior to being seized by the police will generate greater uncertainty and ambiguity regarding an officer's authority to search incident to arrest. If *Belton* is read to cover all "recent occupants," police officers and the judiciary will confront new and additional line-drawing problems regarding search incident to arrest authority.

Several lower courts have noted that if *Belton* is extended to permit a search whenever police arrest a "recent occupant" who was not subject to seizure while inside a car, the clarity of *Belton* will be diminished. As one court explained, if *Belton* "is stretched to encompass the search of a vehicle that was voluntarily vacated by a person before confrontation with the police began, the 'bright-line' rule becomes hazy and uncertain. [Police] would be left to wonder

what combination of temporal and spatial proximity the arrestee must have to the vehicle at the time contact was initiated to allow the search without a warrant." *Michigan v. Fernengel*, 549 N.W.2d 361, 363 (Mich. App. 1996). If *Belton* is applied to every "recent occupant," police will have to make case-by-case determinations regarding whether an arrestee was a "recent" occupant of a vehicle and the arrestee's proximity to the vehicle at the time of arrest. See, *Texas v. Kelly*, 963 S.W.2d 866, 869 (Tex. App. – San Antonio 1998); *Gauldin v. Texas*, 683 S.W.2d 411, 414 (Tex. Cr.App. 1984). When applied to a motorist who was not subject to seizure while inside a vehicle, the term "recent occupant" has various connotations, and invites subjective judgments regarding a person's connection to a vehicle.

Even courts that adopt petitioner's position and extend *Belton* to a "recent occupant" who was not seized inside a car recognize that individualized decisions regarding the scope of an officer's authority to search incident to arrest are still necessary. For example, the Colorado Supreme Court extended *Belton* to cover a situation "where the occupant of a vehicle anticipates police contact and exits the vehicle immediately before that contact occurs." *Colorado v. Savedra*, 907 P.2d 596, 599 (1995) (en banc). By extending *Belton* in this context, the court acknowledged that the "issue of temporal proximity between the police encounter and the defendant's presence in the vehicle is the main factor courts consider in determining whether a person is a recent occupant of a vehicle for purposes of *Belton*." *Id.* In practice, this means that the officer in the field will first have to decide whether the arrestee has been outside of a car for a significant period of time, subject to the second-guessing of judges.[8]

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[8] *Id.* (noting that some courts have ruled *Belton* inapplicable where "the defendant has been outside of the car for a substantial

Other line-drawing problems have arisen when lower courts extend *Belton* to an arrestee who was not physically occupying a car when seized by the police. In *United States v. Sholola*, 124 F.3d 803 (7th Cir. 1997), the Seventh Circuit concluded that the defendant was "'positively linked'" to a vehicle when, during a conversation with an officer he had "pointed to the vehicle, opened the front driver's side door with a set of car keys in his hand, and stated, 'See, it's my car.'" *Id.* at 817. Because the defendant was "positively linked" with an automobile, the Seventh Circuit ruled that *Belton* permitted a search of the car incident to the arrest. Judge Wood concurred in the judgment in *Sholola*, but warned that judges should be mindful "not to extend [*Belton*] too far beyond its facts." *Id.* at 823. Judge Wood was concerned that the majority's use of the phrase "positively linked" might "be misunderstood in a future case." *Id.*

Sholola's extension of *Belton* illustrates the dangers of the approach advocated by petitioner. A "recent occupant" rule requires the type of case-by-case analysis and subjective judgments that petitioner and its *amicus* criticize. Just as deciding whether a person is "positively linked" to a car when he or she is seized outside the car requires considering the particular facts of each case, a decision on whether a person is a "recent occupant" also requires a particularized assessment of the facts of each case. Moreover, extending *Belton* to cover all "recent occupants" eviscerates *Chimel*. Judge Wood's criticisms of the "positively linked" test are equally pertinent to a "recent occupant" standard:

> [Some] "[recent occupants]" would plainly fall

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period of time," while other courts have found "a person to be a recent occupant where police come upon the scene immediately after the suspect has left the car.") (citations omitted).

> outside the scope of *Belton*. For example, the police could observe a suspect parking a car in an off-street legal parking lot, and then walking two blocks away from it, keeping both vehicle and suspect under constant surveillance. If they then arrested the suspect, in my view they would need something other than *Belton* to justify a search of the car, even though [the defendant] might be said to [be a "recent occupant" of the car].

Id. at 823.

Neither petitioner nor its *amicus* propose a definition of "recent occupant" that solves the line-drawing problems that arise when *Belton*'s *per se* rule is extended to any recent occupant of an automobile. Indeed, petitioner recognizes this problem, but offers no solutions. See Pet. Br. 8 ("*Belton*'s bright-line rule is not without limits. Indeed, certain factual situations will present temporal and spatial expansion that will render a search unreasonable, but whether the police officer initiated contact is not one of the factors to consider in the reasonableness calculus."). Rather than proposing a solution, the United States urges this Court to ignore the ambiguity associated with the term "recent occupant." Without attempting to define the term "recent occupant," the Solicitor General simply asserts that "[t]here is no doubt" that respondent was a "recent occupant" however that term may be defined. U.S. Br. 21.

The Solicitor General ducks the hard question of defining under what circumstances an arrestee qualifies as a "recent occupant" by suggesting that *Belton*'s applicability to "outlying cases" need not be decided now. *Id.* at 21, n.7. What the Solicitor General calls "outlying cases," however, have actually generated a substantial amount of litigation in

the lower courts regarding the proper scope of *Belton*'s automatic search rule. See LaFave, *supra*, § 7.1(a) at 436-37, n. 25 & 26 (3d ed. 1996 & Supp. 2001) (citing cases illustrating split among lower courts on *Belton*'s applicability to arrestees who were recent occupants of vehicles). If bright lines are essential to guide officers and judges, then *Belton*'s holding should be left undisturbed and this Court should reject petitioner's proposal to extend *Belton* to any "recent occupant of a motor vehicle." Pet. Br. 7.

C. The Court's Precedents Do Not Support Petitioner's Argument That Arresting A "Recent Occupant" Of A Vehicle Automatically Triggers A Search Of A Car Incident To Arrest

Although petitioner and its *amicus* focus their attack on the Florida Supreme Court's application of *Belton*'s *per se* rule, petitioner's proposal would do more than simply eliminate the distinction created by the Florida Supreme Court. Under petitioner's approach, whenever someone associated with a vehicle is arrested, police may automatically conduct a contemporaneous search of that vehicle. The rule urged by petitioner is a radical departure from the search incident to arrest rules announced in *Chimel* and *Belton*.

Recognizing that a "recent occupant" test is not a bright-line rule, petitioner asserts that "close association" with a car is sufficient to trigger *Belton*'s *per se* search rule. Petitioner states that "[i]f close association with the car is demonstrated at the moment of arrest, the arrestee is considered a 'recent occupant.' This can be shown where the arrestee has acknowledged he owns the car, where the arrestee has recently been physically in the car, or where the arrestee is close enough to the car to continue to have access to it." Pet. Br. 14 (footnote omitted). Later, petitioner unequivocally asserts: "A valid arrest of a recent occupant of

a motor vehicle, without more, justifies a search incident to arrest under *Belton*." *Id.* at 18 (emphasis added). Petitioner is unable to cite any precedent from this Court for its position because none exists.

Petitioner interprets *Chimel*'s "immediate control" rule as if it were identical to a test of possession. The logic supporting petitioner's argument recalls an era of this Court's search incident to arrest jurisprudence that permitted police to search the area considered to be in the "possession" or under the "control" of the arrestee. For example, in *Harris v. United States*, 331 U.S. 145 (1947), a five-hour search of a four-room apartment was upheld as a valid search incident to arrest because the arrestee "was in exclusive possession" of the premises. *Id.* at 152. See also *United States v. Rabinowitz*, 339 U.S. 56, 63 (1950) (relying on *Harris* to uphold an hour and a half search of defendant's office as a valid search incident to arrest). The logic that supported the results in *Harris* and *Rabinowitz* was firmly rejected in *Chimel*. See *Chimel*, 395 U.S. at 760. Despite that clear rejection, petitioner proposes that suspicionless car searches are *per se* reasonable conditioned only upon the arrest of a recent occupant. If Fourth Amendment principles "preclude[] indulgence in the fiction that the recesses of a man's house are like the pockets of the clothes he wears at the time of his arrest," *Harris*, 331 U.S. at 164 (Frankfurther, J., dissenting), then those same principles preclude treating a man's vehicle as the equivalent of a shopping cart pushed by the arrestee at the time of his arrest.

Petitioner and its *amicus* also contend that in *Michigan v. Long*, 463 U.S. 1032 (1983), this Court already decided the issue preserved in this case. According to petitioner, *Long* "noted that an arrest itself is a significant event which, in and of itself, justifies an 'automatic' search incident to that arrest." Pet. Br. 6; *see also* U.S. Br. 14 (*Long* "confirms that *Belton*

is not limited to instances in which the arrestee is ordered out of the car by police."). The dicta from *Long* provides no basis for reversing the ruling below.

In *Long*, police observed Long's car traveling erratically and speeding. After watching the car swerve into a ditch, the police stopped to investigate. Long met the officers at the rear of the car. Suspecting that Long was intoxicated, the officers asked to see his license. As Long walked toward the open door of his car, the officers observed a large hunting knife on the floor. After frisking Long, the police conducted a search of the passenger compartment for other weapons. Inside the car they found marihuana. *Long* held that a protective search of a passenger compartment is valid when reasonable suspicion exists that a car contains weapons potentially dangerous to police.

In dicta, *Long* stated "if the officers had arrested Long for speeding or for driving while intoxicated, they could have searched the passenger compartment under *New York v. Belton*." *Id.* at 1035, n.1; see also *id.* at 1049, n.14 ("[T]he 'bright line' that we drew in *Belton* clearly authorizes... a search whenever officers effect a custodial arrest."). *Long's* dicta is consistent with the interpretation of *Belton*'s *per se* rule as limited to cases where police seize or have the authority to seize a person while he or she is an occupant of a car. Police had the authority to stop Long as soon as they observed his vehicle traveling erratically and speeding. Because Long was subject to seizure while an occupant of a car, his ability to exit his vehicle before being ordered to do so by the police does not negate the applicability of *Belton*'s *per se* rule. See *infra* Part III.

Indeed, it is clear that this Court has never gone so far as to hold that arresting a recent occupant of a car is the "only condition required" to searching an arrestee's vehicle, as

implied in *Long's* dicta and as asserted by petitioner. *See* Pet. Br. 11. Such a holding would constitute a radical departure from the standards announced in *Chimel* and *Belton*. Although in recent years this Court has greatly enlarged the automobile exception, searches under that doctrine are never "automatic." Such searches always require probable cause that contraband is inside a car. *See Houghton, supra.* Similarly, searches under *Long* require reasonable suspicion that a car's passenger compartment poses a threat to an officer's safety; *Long* does not authorize an "automatic" search. *See Long*, 463 U.S. at 1049, n.14 ("We stress that our decision does not mean that the police may conduct automobile searches whenever they conduct an investigative stop."). The rule urged by petitioner, however, allows an automatic and suspicionless search of an automobile whenever police arrest a "recent occupant" of an automobile. This Court has never announced such a holding. Since *Chimel*, this Court's search incident to arrest precedents have embraced Justice Frankfurter's view that "[a]uthority to arrest does not dispense with the requirement of authority to search." *Harris*, 331 U.S. at 165 (Frankfurther, J., dissenting).[9]

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[9] Petitioner's reliance on *Maryland v. Buie*, 494 U.S. 325 (1990), is similarly misplaced. Pet. Br. 8 ("If it is reasonable for the police to be to protect themselves in homes, it is certainly reasonable for the police to be able to protect themselves on the street when they place an individual under arrest.") Unlike the *per se* search rule urged by petitioner, the protective sweep *Buie* authorized "is decidedly not 'automati[c],' but may be conducted only when justified by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene." 494 U.S. at 336.

III. *BELTON*'S *PER SE* RULE SHOULD BE RESTRICTED TO CASES WHERE A PERSON WAS SEIZED OR SUBJECT TO SEIZURE WHILE AN OCCUPANT OF A CAR

The Florida Supreme Court correctly held that *Belton*'s *per se* search rule was inapplicable to the facts of this case. The ruling below confines *Belton*'s bright-line rule to cases where an officer "initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant" while the defendant is seated inside a car. JA 143. Although the ruling below properly applies this Court's precedents, a more workable and efficient rule is available to resolve the line-drawing problems surrounding the application of *Belton* to a "recent occupant" of a vehicle. A better standard limits *Belton*'s *per se* rule to cases where a person is seized or subject to seizure while inside a car. If police arrest an occupant or recent occupant of a vehicle who was not seized or subject to seizure while inside a vehicle, the scope of an officer's authority to search incident to arrest is governed by *Chimel*, not by *Belton*'s automatic search rule.

This reading of *Belton* advances Fourth Amendment principles generally and the goals of *Belton* specifically. First, the facts and holding of *Belton* itself establish a *per se* rule when a person is seized while an occupant of a car. As noted, Roger Belton and three others were occupants of a car when their vehicle was stopped for speeding. Although Belton was ordered out of the car, thus making him a "recent occupant" of the vehicle, his status as a recent occupant was the direct consequence of the officer's authority to seize Belton while he was an occupant of a vehicle. Under these circumstances, *Belton* held that "when a policeman has made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the

passenger compartment of that automobile." 453 U.S. at 460 (footnotes omitted) (emphasis added).

Second, confining *Belton* to cases where a person was seized or subject to seizure while inside a car produces a rule that is easily understood and may be routinely followed by police officers. Well-trained officers know when they effect a seizure of a person,[10] and when they have the authority to seize an occupant of a vehicle. *See Delaware v. Prouse*, 440 U.S. 648 (1979) (random traffic stops are unconstitutional; police may seize a vehicle where probable cause or reasonable suspicion exists that a motorist has committed a traffic violation or other crime). Thus, whenever police observe a vehicle commit a traffic violation, as in *Belton* or *Long*, they have the authority to seize the vehicle and its occupants. If during the course of that seizure, probable cause to conduct an arrest develops, *Belton*'s *per se* rule applies regardless of whether the occupants of the vehicle remain seated in the car, have been removed from the car, or have exited the vehicle voluntarily.

A few lower courts have applied *Belton* in cases involving so-called "recent occupants" to remove the concern that officers might have to "race" to a suspect's vehicle to prevent the suspect from exiting from his or her car. *See e.g., Nebraska v. Gonzalez*, 487 N.W.2d 567, 572 (Neb. App. 1992) ("In order to conduct a valid search, police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of his or her

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[10] Under this Court's precedents, a person is "seized" under the Fourth Amendment only if a reasonable person would have believed that he was not free to leave the scene, or would not have felt free to decline an officer's requests or otherwise terminate the encounter. *See Florida v. Bostick*, 501 U.S. 429, 434, 436-37 (1991).

vehicle."); cf. *Colorado v. Savedra*, 907 P.2d at 600 ("If *Belton* were read to preclude a search...where police contact occurred just after the suspect exited his vehicle, then knowledgeable suspects could effectively conceal evidence by stepping outside of their vehicle whenever they saw a police officer approaching."). A better and more efficient rule would minimize the factors police must consider when determining the applicability of *Belton*. "When," "where," or "how" an officer initiates contact with an automobile occupant, the degree of police contact, or whether the occupant has "anticipated" possible imminent police contact,[11] should be immaterial in determining *Belton*'s applicability.

Confining *Belton* to cases where police have the authority to seize a car occupant eliminates the worry that officers will have to "race" from their patrol cruisers to a seized vehicle to prevent an occupant from exiting his car. If police have the authority to stop a vehicle while the suspect is inside, as they did in *Gonzalez*, 487 N.W.2d at 568, a suspect cannot make the car "*Belton*-proof" by exiting the vehicle before the officer can vacate his cruiser. Even a suspect who

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[11] *See Savedra*, 907 P.2d at 601 (applying *Belton* because "[t]he indirect contact between [defendant] and the police officer occurred when the officer entered the parking lot. That is the point at which [defendant] left his vehicle, and it is reasonable to conclude that he did so either to avoid police contact or to divert the location of the contact away from the truck."); cf. *United States v. Mans*, 999 F.2d 966, 968-69 (6th Cir. 1993), *cert. denied*, 510 U.S. 999 (1993) (applying *Belton* even though defendant had exited his vehicle prior to when officer initiated verbal contact; officer had initiated contact with defendant sometime earlier when defendant knew officer was following him). Unlike the term "seizure," which has a definitive legal meaning and is understood by police officers and judges, the term "initiates contact" has no content or legal significance under the Fourth Amendment.

voluntarily exits his vehicle during a traffic stop is still considered "seized" for Fourth Amendment purposes until the traffic stop is completed. Cf. *Long*, 463 U.S. at 1051 (noting that during any investigative stop, police may detain person against his will). Further, an officer will not have to make "an individualized determination as to the reason that the arrestee got out of his car." U.S. Br. 19. Where a vehicle is lawfully seized or subject to seizure, and the occupant is later arrested, *Belton* applies regardless of why an arrestee exits his or her car.

Third, limiting *Belton* to cases where a person was seized while an occupant of a car produces a rule that is consistent with analogous Fourth Amendment rules governing an officer's power to investigate and detain occupants of automobiles. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (*per curiam*), held that during a traffic stop police may routinely order a driver out of his vehicle. See also *Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (extending rule of *Mimms* and holding "that an officer making a traffic stop may order passengers...out of the car pending completion of the stop")(footnote omitted). In reaching this conclusion, however, *Mimms* emphasized that it was not holding "that whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car." *Mimms*, 434 U.S. at 111, n.6 (internal quotation marks omitted).

Mimms and *Wilson* restrict forcible exit orders of car occupants to lawful seizures. A contrary rule would subject anyone in a car to an arbitrary intrusion. Likewise, if police have no basis for seizing an automobile occupant, that person's decision to exit his vehicle should not occasion an automatic search of his vehicle merely because the person is later arrested outside the vehicle. A few lower courts, however, have applied *Belton* to cases where police arrest

"recent occupants" of vehicles who were not subject to seizure while inside their vehicles. *See Glasco v. Virginia, supra; Colorado v. Savedra, supra*. These courts reasoned that a *per se* search is valid because "a knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact." *Glasco*, 513 S.E.2d at 142. This reasoning, however, proves too much.

By analogous reasoning, the police could search a basement or kitchen that an arrestee has just exited prior to his arrest in the living room because the arrestee had the "same motive and opportunity to destroy evidence or obtain a weapon" as a person who was initially seized by the police in while the basement or kitchen. This type of sloppy logic was rejected in *Chimel*: "There is no comparable justification...for routinely searching any room other than that in which an arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." *Chimel*, 395 U.S. at 763. In sum, if police do not have the authority to seize a person sitting in a car, then that person's decision to exit his vehicle cannot justify an automatic search of the vehicle if the person is subsequently arrested outside the car.

Finally, this superior Fourth Amendment standard avoids line-drawing problems. *See Belton*, 453 U.S. at 458; *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979). Restricting *Belton* to cases where police have the authority to seize an automobile occupant before an arrest avoids the case-by-case decisions that are necessary to decide whether an arrestee was a "recent occupant" of a vehicle for search incident to arrest purposes. As noted above, many lower courts have recognized that if *Belton* is applied to every case involving a "recent occupant" of a vehicle, police officers and judges must make individualized determinations regarding an

arrestee's temporal and spatial proximity to a vehicle. A more efficient and responsive rule is available: police officers and judges should only decide whether a person was seized or subject to seizure while an occupant of a car. When police seize a person in a car, and the person is subsequently arrested, *Belton*'s *per se* search rule applies.

CONCLUSION

For the reasons stated above, the judgment of the Florida Supreme Court should be affirmed.

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